Minutes of the 106th meeting of the Board of the EHRC

14 September 2022 (15:00-17:30)
Virtual

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Attending

Commissioners
Baroness Kishwer Falkner (Chairwoman); Caroline Waters (Deputy Chair); Eryl Besse; David Goodhart; Alasdair Henderson; Helen Mahy; Dr Lesley Sawers and Su-Mei Thompson.

Officers
Marcial Boo, Chief Executive Officer
Cath Denholm, Chief Operating Officer
Melanie Field, Chief Strategy and Policy Officer
Alasdair Macdonald, Director, Policy and Human Rights Monitoring (items 1 to 7)
Jacqueline Killeen, Director, Regulation
Moya Alcock, Director, Communications (items 1 to 7)
Naomi Fawcitt, Principal, Private Office
Ruth Latusek, Senior Associate, Governance Lead
Sarah Whelan, Principal, Corporate Governance

Guests
Charles Ramsden, Equality Hub

Observing
Britta Rinaldi, Chief of Staff, starting 3 October 2022
Ila Patel, Senior Associate, Private Office

1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees. Apologies for absence were received from Commissioners Akua Reindorf and Jess Butcher.

2. Declarations of interest

2.1 There were no new declarations of interest.

3. Minutes of the 105th Board meeting (EHRC 106.01)

3.1 The Board approved the minutes of the meeting of 27 July as an accurate record, subject to minor amendments to paragraphs 4.3, 6.3, 8.1, 8.2, 10.1 and 12.2.

4. Actions arising (EHRC 106.02)

4.1 The Board noted the action log. It was agreed that the Wales Commissioner should be consulted on the subtitle for 'The Equality and Human Rights Barometer' 2023 report in Wales by December 2022. The CEO advised that the name of the 'Is Britain Fairer?' Commissioner Working Group will be discussed at a future Board meeting.

Action: Governance team to schedule a discussion on the 'Is Britain Fairer?' Commissioner Working Group name at a future Board meeting.

5. Bill of Rights Bill

5.1 The Board discussed issues raised by the Government's proposed Bill of Rights Bill. The Bill had been scheduled for second reading in Parliament in September but has now been abandoned by the new Conservative administration.

5.2 The Board agreed to maintain the EHRC's earlier positions on these issues, as published in briefings in March 2022. In addition, it was agreed to write to the Minister and make public the EHRC's support of the existing Human Rights Act, including the current balance of power between Parliament and the courts, the need to consult devolved nations, the need to conduct thorough pre-legislative scrutiny, and to remain party to the European Convention on Human Rights.

Action: Policy team to work with the Communications team to ensure that the EHRC's position on these issues is made public.

6 Implications for Scottish Gender Recognition Act (GRA) reform in Britain (EHRC 106.03)

6.1 The Board noted the changes to the paper following the special Board meeting about GRA reform on 5 September. They considered in full the advice from the Scotland and Wales Committees, as reported by the Scotland and Wales Commissioners respectively. It was noted that both meetings had been attended by the CEO and Chairwoman by invitation.

6.2 The Board agreed to write to relevant ministers in the Scottish, UK, and Welsh Governments to set out the EHRC's position, and to engage with Scotland's political parties. They agreed to take a measured approach to communications and to consider carefully the EHRC's public messaging in Scotland on this matter. The EHRC should also continue to engage with staff according to current procedures.

6.3 Commissioners made the following observations and suggestions:

a) to continue to consider the wider social and legal implications of the ongoing debate on issues of sex and gender, and to have a Board discussion on the Equality Act, its interaction with the GRA, as well as wider potential changes at a future Board meeting;
b) to clarify the potential effect of diverging legislation across Britain;
c) to consider the implications of GRA reform in the context of preserving a rights-based culture;
d) to take a cautious, evidence-based and independent approach that recognises potential policy divergence between national government and the devolved administrations; and
e) to consider opportunities to communicate the EHRC's positions on these issues directly to people in Scotland.

Action: Governance team to schedule a discussion on the Equality Act, its interaction with the GRA, as well as wider potential changes at a future Board meeting.

6.4 Commissioners were advised that the EHRC had sought and received Scottish Counsel's advice on the decision-making roles of the EHRC's Board and its statutory Scotland and Wales Committees, as set out in the Equality Act 2006. This advice was sought specifically in the context of the GRA Reform (Scotland) draft Bill. In Counsel's opinion, the Commission's view that the draft Bill does not "affect only Scotland" is reasonable.

Action: Director of Regulation to draft a letter for the Chairwoman to send to the Scotland Commissioner to provide assurance on this point.

Action: Governance team to circulate a copy of Counsel's opinion to those Commissioners who requested a copy.

6.5 Commissioners were updated on the For Women Scotland Judicial Review, following their discussion at the special Board meeting on 5 September.

7. Committee and Commissioner Working Group updates

7.1 Commissioners were advised that only the Scotland and Wales Committees had met since the last Board meeting on 27 July.

7.2 The Chair of the Audit and Risk Assurance Committee (ARAC) advised that ARAC is concerned that the EHRC's budget has not been agreed by the Government and sees this as a significant risk. She also advised that ARAC fully supports the EHRC proceeding on the basis that the sum is agreed and holding the CEO, as Accounting Officer, to account. The Board's concerns were also noted. The CEO assured Commissioners that a detailed budget report, five months into the financial year, will be provided to ARAC in October and an update will be given to the Board in November. The Equality Hub advised that proposals on the EHRC's budget would be submitted to the newly appointed Chancellor of the Duchy of Lancaster on 15 September.

Action: Finance to provide a 5-month budget report to ARAC in October and an update to the Board in November.

7.3 Commissioners advised that they would welcome an update on financial performance as part of the CEO report, to enable Board members to exercise financial oversight, in line with their responsibilities. This has been made more pressing by the lack of budgetary settlement half way through the financial year.

Action: Private Office to include an update on financial performance as part of the regular CEO report.

7.4 The Chair of the Human Rights Monitoring Commissioner Working Group advised that she has been supporting the Strategy team to prepare for the EHRC's National Human Rights Institution (NHRI) re-accreditation hearing on 6 October. The CEO advised that he will update Commissioners after the re-accreditation hearing.

Action: Governance team to schedule an update on the EHRC's NHRI re-accreditation at a future Board meeting.

8. CEO Report & Chairwoman's update (EHRC 106.04)

8.1 Commissioners noted the report.

8.2 The CEO advised that publication of the EHRC's materials on discrimination related to afro hair had been delayed into October following the death of Queen Elizabeth II. The delay would allow the new Education Minister and his staff to engage on the material, and for new junior ministers to be appointed.

8.3 The CEO updated the Board on the two-day conference for heads of NHRIs that he attended in Warsaw, organised by OSCE's Office for Democratic Institutions and Human Rights, including the intelligence gathered about the process of re-accreditation.

8.4 Commissioners supported the establishment of the Regulatory Hub and requested more detail on the Hub's remit and operating model. Executives advised that the Hub will go live on 26 September and an update will be provided to the Board at a future meeting.

Action: Governance team to schedule an update on the Regulatory Hub at a future Board meeting.

8.5 Commissioners noted the Chairwoman's update.

9. AOB

9.1 The Board noted that the next meeting would be a two-day face-to-face meeting on 18 and 19 October in Manchester, including a dinner.

9.2 The Chairwoman advised Commissioners that, together with the Equality Hub and an independent panel member, she had conducted interviews for new Commissioner appointments. Advice would be put by the Equality Hub to the new Minister for Equalities, and the Chairwoman expected decisions by the end of November. She would update the Board in due course.

Action: Governance team to schedule an update on new Commissioner appointments at a future Board meeting.

9.3 The Board noted the Forward Schedule and the minutes of the Wales Committee, Scotland Committee, ARAC and Equality and Human Rights Monitoring Commissioner Working Group meetings.